

Randy E. Davidson
3300 Penobscot Building
Detroit, MI 48226

March 14, 2003

Mr. Corbin Davis, Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: Proposed Amendments to MCR 7.212
File 2002-34

Dear Mr. Davis:


The Court should *not* adopt the proposal to reduce the time for filing the appellant's brief from 56 days to 42 days after the transcripts are filed and eliminate stipulations for a 28-day extension of time.

Administrative Order 1981-7, Standard 7 states that "counsel shall investigate potentially meritorious claims of error not reflected in the trial court record when he or she is informed or has reason to believe that facts in support of such claims exist." As you know, Michigan has a unified appeal process in which assigned appellate counsel (who is not the trial counsel) has to raise off-record issues at the same time as record issues, or risk procedural default barring Michigan and Federal habeas review in criminal cases. See, MCR 7.211(C)(1); MCR 6.502(G)(2); MCR 6.508(D)(3); see generally *Lee v Kemna*, 534 US 362, 376; 122 S Ct 877; 151 L Ed 2d 820 (2002).

In my eleven years as an assistant defender at SADO, I have frequently had to investigate potentially meritorious off-record issues raised during visits with clients. Many of these issues involve witnesses who were not produced at trial and have to be located and interviewed to make an offer of proof. I am usually able to complete my investigation within sixteen weeks after the transcripts are filed (the initial eight weeks allowed to file the brief, plus a four week stipulation from the prosecutor, and an additional four week extension under current Court of Appeals policy). Despite best efforts, it is simply not possible to thoroughly investigate potentially meritorious off-record claims in time to file the brief within six weeks after the transcripts are filed. Unless the Court is going to change the present system to a bifurcated appeal (i.e., raise record issues first and then file a post-appeal motion for relief from judgment to raise off-record issues) the proposed time limits won't work in criminal appeals.

Speedy resolution of cases and finality of judgments is important. But the Court should not lose sight of the special difficulties facing appellants in criminal cases. A system that does not provide a fair opportunity to investigate and prepare an appeal is just as bad as denying appellate counsel altogether.

Sincerely,



Randy E. Davidson

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cc: James R. Neuhard
Norris J. Thomas, Jr.
Terence R. Flanagan
File

